

**COPYRIGHT LAW: THEORY AND PRACTICE*****Responsible Faculty Instructor:***

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Assistant Professor

Credits: 4

Credits Type: Law

Cross-registration: No

Pre-requisites: N/A

**COURSE DESCRIPTION (COURSE VISION):**

The course aims to offer a well-rounded discussion and a deeper exploration into copyright laws. The ever expansive nature of copyright law begets frequent exploration into the normative justifications for the same and whether those justifications still hold in light of how the law looks as of today. The course will discuss and explore the building blocks of copyright such as *inter alia* originality, authorship, ownership, rights, infringements and defenses. Topics covered will include the history and evolution of copyright, protected subject matter, the scope of the economic and moral rights, intermediary liability and the principles underlying copyright enforcement. The course will integrate discussion on the aforesaid topics with pressing issues on generative AI. The course will discuss the various points of intersection of GenAI and Copyright and explore how GenAI either subverts or fits into the mold of copyrightability or leads to infringement of copyright.

The course will primarily engage with the Indian copyright law framework but will also engage with the EU, UK and the US legal framework as and when needed. The course will discuss into settlement agreements; structuring IP Related clauses; strategies and other practice related insights that the instructor can offer basis their practice experience. We will discuss types of contracts involving transfer of IP and drafting IP Contracts and IP related clauses in commercial contracts.

**TEACHING METHODOLOGY:**

The course will start with a discussion on theories aimed to justify IPR and how they hold up currently. The course will then pick apart the building blocks of copyright and go over the same in depth. The instructor will adopt a mix of lecture-based teaching and the Socratic method to impart the lecture. The readings will be shared in advanced and the more the students read beforehand the better scope of engaged discussions and debates. It will also help students form their own views and figure out the tests, principles, justifications they align with the most. The methodology will be a mix of direct instruction led learning, inquiry-based learning and project-based learning (via assessments).

**INTENDED LEARNING OUTCOMES:**

By the end of the course, students should:

- (i) Have a richer understanding of various facets of copyright law;
- (ii) Formulate their own views as to copyrightability of subject matter and exclusions to the same;
- (iii) Formulate their own views as to whether the theories used to justify IPR hold their ground; and
- (iv) Gain practical insights into application of strategies via-a-vis IPR in the commercial law space.

**READING LIST (upto 10 select readings):**

The following are in addition to the relevant provisions of Indian Copyright Act and seminal cases used to de construct the provisions.

1. P Samuelson, Copyright and Freedom of Expression in Historical Perspective
2. Mark A. Lemley, ‘Faith based Intellectual Property’ 62 UCLA L. Rev. 1328 (2015). Available here [https://www.uclalawreview.org/wpcontent/uploads/2019/09/Lemley\\_6.2015.pdf](https://www.uclalawreview.org/wpcontent/uploads/2019/09/Lemley_6.2015.pdf)
3. Daniel J. Gervais, Of Silos and Constellations: Comparing Notions of Originality in Copyright Law (Pg 377-394)
4. Jane C. Ginsburg & Luke Ali Budiardjo, Authors and Machines (Pg 404-416; 433-436)
5. Mark Lemley, HOW GENERATIVE AI TURNS COPYRIGHT UPSIDE DOWN (PG 22-33). Available here - [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4517702](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4517702)
6. Sam Ricketson, Jane Ginsburg International Copyright and Neighbouring Rights: The Berne Convention and Beyond
7. Mira T. Sundara Rajan, The Moral Rights of Authors and Artists: From the Birth of Copyright to the Age of Artificial Intelligence (Chapter 5)
8. Indranath Gupta & Lakshmi Srinivasan, Evolving scope of intermediary liability in India
9. Timothy J. McFarlin, Infringing Uses, Not Works
10. Daniel J. Gervais, Artificial Intellectual Property (pg 14-16, 18-23)

**WEEKLY READING PLAN (WEEKLY OUTLINE):**

A weekly plan is provided below:

<b>MODULES</b>	<b>WEEK(S)</b>
<p><b>Module 1: History of Copyright &amp; Theories justifying IPR</b>  <i>Description: The module will discuss the history of copyright and move to theories that justify the existence of IPRs, including copyright. We also explore if the theories have merit or if we need to reconsider these justifications in the present times. We explore if copyright law promotes creativity or shackles creators, further disenfranchising them.</i></p>	<b>1</b>
<p><b>Module 2: Work and Originality: Exploring the thresholds</b>  <i>Description: The module will explore various ‘works’ protected under the copyright laws and threshold of originality. The module will also focus on protection of computer programmes and database and the issues surrounding the same. The module will then interpolate these discussions and see where do AI generated outputs stand in terms of threshold of originality.</i></p>	<b>2 and 3</b>
<p><b>Module 3: Authorship versus ownership: where does the creator stand</b>  <i>Description: The module will explore who is the author of a work and who is the first owner. We then question if the idea that copyright protects the creator stands true in light of the first owner principle. We also take in the case study of a producer of a cinematographic film vs. a director and explore the issue through that lens. We will also discuss the contemporary discourse on AI authorship.</i></p>	<b>4</b>
<p><b>Module 4: Idea Expression, Scene a Faire and Video Games</b>  <i>Description: The module will explore the idea expression dichotomy, various tests and exceptions – doctrine of merge, abstraction test and scene a fair with a case study on video games and the protection elements therein. We also discuss if the doctrine holds water in light of AI generated works.</i></p>	<b>5</b>
<p><b>Module 5: Copyright, Neighbouring Rights and Moral Rights</b>  <i>Description: The module discusses economic rights of authors / owners of copyright and moves on to neighboring rights. The module will also discuss moral rights of authors, their development, enforcement; and interaction with Gen AI. The module will further discuss assignment and waiver of rights with emphasis on drafting such agreements / clauses.</i></p>	<b>6 to 8</b>

<p><b>Module 6: Intermediary Liability and the Safe harbor protection</b>  <i>Description: the module will discuss the interaction of Information Technology Act, 2000 with the Copyright Act, 1957 and explore the safe harbor protection offer to intermediaries – its coverage and limitations.</i></p>	<p><b>9 and 10</b></p>
<p><b>Module 7: Infringement and Defenses to Infringement</b>  <i>Description: This module will deal with infringement, remedies and defenses. We will also explore dynamic and superlative injunctions that the courts have been awarding and discuss contemporary issues including the SciHub Blocking Order</i></p>	<p><b>11 and 12</b></p>
<p><b>Module 8: Copyright and AI: A sneak peek</b>  <i>Description: This module will provide a sneak peek into the various points of intersection of Generative AI and copyright law. We will explore how GenAI either subverts or fits into the mold of copyrightability.</i></p>	<p><b>13 and 14</b></p>
<p><b>REVISION WEEK</b></p>	<p><b>Week 15</b></p>